

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

Civil Action No. 158 of 2015

**BETWEEN:** **SARJEET SINGH** of Lot 18, Votua, Ba

**PLAINTIFF**

**AND:** **MANJIT KAUR** of Votua, Ba, Domestic Duties

**FIRST DEFENDANT**

**AND:** **ATTORNEY GENERAL OF FIJI** for and on behalf of the **DIRECTOR OF LANDS**

**SECOND DEFENDANT**

Appearances: Mr. Padarath N. for the Plaintiff  
Ms. A. B. Swamy for the first Defendant  
Mr. J. Mainavolau for the second Defendant  
Date of Hearing: 05 September 2023  
Date of Ruling: 28 November 2023

**R U L I N G**

1. The first defendant, Manjit Kaur, has filed a Summons under Order 33 Rule 7 of the High Court Rules 1988 on 28 October 2022.
2. Order 33 Rule 3 of the High Court Rules 1988 provides:
  3. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.
3. Order 33 Rule 7 provides as follows:
  7. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order to give such judgment therein as may be just.
4. The powers to make Order under the Order 33 are discretionary in nature.

5. The court may order a preliminary issue to be tried separately.
6. If the decision on the preliminary issue substantially disposes of the action the court may either (1) dismiss the cause, or (2) make such other order or (3) give such judgment as may be just.
7. The issues which the Plaintiff wishes to be determined are:

**WHETHER** the area of Crown Lease No. 18854 occupied by the Plaintiff falls within previous Crown Lease No. 5319 and if so, whether the Plaintiff has locus standi to bring these proceedings?

8. In **Gurbachans Foodtown Ltd –v- the New India Assurance Company Limited** [2016] FJSC 45; CBV 1 of 2016, 28 October 2016, the Supreme Court said at paragraph 17:

“Ordinarily, a preliminary issue is tried at the commencement of the hearing only when the Court is of the opinion that there is a possibility of disposing the entire case finally. It is done so, in order to minimise delay and for convenience and to curtail expenses and also to avoid duplicity. Though it is the discretion of the Court to try a preliminary issue which may contain even facts, it is always better to take up all the matters in dispute in one trial particularly when the issues of facts are involved. Of course, clear questions of law that help disposing the matter finally, are always being tried as preliminary issues.”

9. Notably, in this case, the matter is ready for trial. Judging from the Pre-Trial Conference Minutes executed by the parties, it would appear that there are many triable issues in this case. There are altogether twenty-five agreed issues for trial. Apart from that, neither the pleadings nor the PTC Minutes make it immediately clear to me as to how the trial of the preliminary issue would either dispose of the case entirely or substantially.
10. Since this matter is ready for trial, I will exercise my discretion against granting the application.
11. Costs to the First Defendant which I summarily assess at \$300-00 (three hundred dollars only).



Anare Tuilevuka  
JUDGE

28 November 2023